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STATE RESPONSIBILITY

Draft articles on State responsibility: titles and texts of articles adopted by the Drafting Committee at the 45th and 46th sessions

Part Two

Article 11

Countermeasures by an injured State

1. As long as the State which has committed an internationally wrongful act has not complied with its obligations under articles 6 to 10bis, the injured State is entitled, subject to the conditions and restrictions set forth in articles 12, 13 and 14 not to comply with one or more of its obligations towards the State which has committed the internationally wrongful act, as necessary in the light of the response by the State which has committed the internationally wrongful act in order to induce it to comply with its obligations under articles 6 to 10bis.

2. Where a countermeasure against a State which has committed an internationally wrongful act involves a breach of an obligation towards a third State, such a breach cannot be justified as against the third State by reason of paragraph 1.

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Article 12

Conditions relating to resort to countermeasures

1. An injured State may not take countermeasures unless:

(a) it has recourse to a [binding/third party] dispute settlement procedure which both the injured State and the State which has committed the internationally wrongful act are bound to use under any relevant treaty to which they are parties; or

(b) in the absence of such a treaty, it offers a [binding/third party] dispute settlement procedure to the State which has committed the internationally wrongful act.

2. The right of the injured State to take countermeasures is suspended when and to the extent that an agreed [binding] dispute settlement procedure is being implemented in good faith by the State which has committed the internationally wrongful act, provided that the internationally wrongful act has ceased.

3. A failure by the State which has committed the internationally wrongful act to honour a request or order emanating from the dispute settlement procedure shall terminate the suspension of the right of the injured State to take countermeasures.

Article 13

Proportionality

Any countermeasure taken by an injured State shall not be out of proportion to the degree of gravity of the internationally wrongful act and the effects thereof on the injured State.

Article 14

Prohibited countermeasures

An injured State shall not resort, by way of countermeasure, to:

(a) the threat or use of force as prohibited by the Charter of the United Nations;

(b) extreme economic or political coercion designed to endanger the territorial integrity or political independence of the State which has committed an internationally wrongful act;

(c) any conduct which infringes the inviolability of diplomatic or consular agents, premises, archives and documents;

(d) any conduct which derogates from basic human rights; or

(e) any other conduct in contravention of a peremptory norm of general international law.